

## TERMS AND CONDITIONS OF SALE

The terms and conditions of sale listed here contain the policy of Mossgreen Pty Ltd and Mossgreen Gallery Pty Ltd trading as Mossgreen auctions. They are the terms on which Mossgreen Auctions and the seller contract with the buyer. They may be amended by posted or oral announcements made during the sale. By bidding at auction you agree to be bound by these terms.

### 1. Background to the Terms used in these Conditions

The conditions that are listed below are terms that are used regularly and may need explanation. They are as follows:

"the Buyer" means the person with the highest bid accepted by the Auctioneer

"the Lot" means any item depicted within the sale for auction and in particular the item or items described against any lot number in the catalogue.

"the Hammer price" means the amount of the highest bid accepted by the auctioneer in relation to a lot

"the Buyers Premium" means the charge payable by the Buyer to the auction house as a percentage of the hammer price.

"the Reserve" means the amount below which Mossgreen agrees with the Seller that the lot cannot be sold.

Forgery means a lot constituting an imitation originally conceived and executed as a whole, with a fraudulent intention to deceive as to authorship, origin, age, period, culture or source, where the correct description as to such matters is not reflected by the description in the catalogue. Accordingly no lot shall be capable of being a forgery by reason of any damage or restoration work of any kind (including re-painting). The insured value means the amount that Mossgreen in its absolute discretion from time to time shall consider the value for which a lot should be covered for insurance (whether or not insurance is arranged by Mossgreen.)

### 2. Mossgreen Auctions as Agent

Except as otherwise stated Mossgreen Auctions (Mossgreen Gallery Pty Ltd or Mossgreen Pty Ltd) acts as agent for the Seller.

The contract for the sale of the property is therefore made between the seller and the buyer.

### 3. Before the Sale

#### a) Examination of Property

Prospective Buyers are strongly advised to examine in person any property in which they are interested before the Auction takes place. Neither Mossgreen nor the seller provides any guarantee in relation to the nature of the property apart from the Limited warranty in the paragraph below.

The property is otherwise sold "AS IS"

#### b) Catalogue and other Descriptions

All statements by Mossgreen in the catalogue entry for the property or in the condition report, or made orally or in writing elsewhere, are statements of opinion and are not to be relied upon as statements of fact. Such statements do not constitute a representation, warranty or assumption of liability by Mossgreen of any kind. References in the catalogue entry to the condition report to damage or restoration are for guidance only and should be evaluated by personal inspection by the bidder or a knowledgeable representative. The absence of such a reference does not imply that an item is free from defects or restoration, nor does a reference to particular defects imply the absence of any others. Estimates of the selling price should not be relied on as a statement that this is the price at which the item will sell or its value for any other purpose. Neither Mossgreen nor The Seller is responsible for any errors or omissions in the catalogue or any supplemental material.

#### c) Buyers Responsibility

All property is sold "as is" without representation or warranty of any kind by Mossgreen or the Seller. Buyers are responsible for satisfying themselves concerning the condition of the property and the matters referred to in the catalogue by requesting a condition report.

### 4. At the Sale

#### a) Refusal of Admission

Mossgreen reserves the right at our complete discretion to refuse admission to the auction premises or participation in any auction and to reject any bid.

#### b) Registration before Bidding

Any prospective new buyer must complete and sign a registration form and provide photo-identification before bidding. Mossgreen may request bank or other financial references to substantiate this registration.

#### c) Bidding as a Principal

When making a bid, a bidder is accepting personal liability to pay the purchase price including the buyers premium and all applicable taxes, plus all other applicable charges, unless it has been explicitly agreed in writing with Mossgreen before the commencement of the sale that the bidder is acting as agent on behalf of an identified third party acceptable to Mossgreen and that Mossgreen will only look to the principal for payment.

#### d) International Registrations

All International clients not known to Mossgreen will be required to scan or fax through an accredited form of photo identification and pay a deposit of \$2,000 AUD in cleared funds into Mossgreen's account at least 24 hours before the commencement of the auction. Bids will not be accepted without this funds deposit. Mossgreen also reserves the right to request any additional forms of identification prior to registering an overseas bid.

This deposit can be made using credit card, however the balance of any purchase made can not be charged to this card, please see Payment 5b for further information.

This deposit is redeemable against any auction purchase.

#### e) Absentee bids

Mossgreen will use reasonable efforts to carry written bids delivered to us AT LEAST 24 Hours to the sale for the convenience of those clients who are not present at the auction in person, by an agent or by telephone. Bids must be placed in Australian Dollars. Please refer to the catalogue for the Absentee/Telephone Bids form. If we receive written bids on a particular lot for identical amounts, and at the auction these are the highest bids on that lot, then it will be sold to the person whose written bid was received and accepted first. Execution of written bids is a free service undertaken subject to other commitments at the time of the sale and we do not accept liability for failing to execute a written bid or for errors and omissions in connection with it. It is the buyer's responsibility to check with the auctioneer immediately after the auction if they were successful at the auction with any absentee bids.

#### f) Telephone bids

Priority will be given to overseas and interstate bidders. Arrangements for this service must be confirmed at least 24 hours prior to the auction. Bidding by telephone is risky for the buyer and is only offered as a service where the buyer cannot attend the auction. Mossgreen accepts no responsibility whatsoever for any errors or failure to execute bids. In telephone bidding the buyer agrees to be bound by all terms and conditions listed here and accepts that Mossgreen Auctions cannot be held responsible for any mis-communications in the process. The buyer also agrees to check all lots are as catalogued at least and about one hour before the start of the auction sale.

#### g) Reserves

Unless otherwise indicated, all lots are offered subject to a reserve, which is the confidential minimum price below which the Lot will not be sold. The reserve will not exceed the low estimate printed in the catalogue. The auctioneer may open the bidding on any Lot below the reserve

By placing a bid on behalf of the seller. The auctioneer may continue to bid on behalf of seller up to the amount of the reserve, either by placing consecutive bids or by placing bids in response to other bidders.

#### h) Auctioneers Discretion

The Auctioneer has the right at his absolute and sole discretion to refuse any bid, to advance the bidding in such a manner as he may decide, to withdraw or divide any lot, to combine any two or more lots and, in the case of error or dispute and whether during or after the sale, to determine the successful bidder, to continue the bidding, to cancel the sale or to reoffer and resell the item in dispute. If any dispute arises after the sale, then Mossgreen's sale record is conclusive.

#### i) Successful bid and passing of risk

Subject to the auctioneer's discretion, the highest bidder accepted by the auctioneer will be the buyer and the striking of his hammer marks the acceptance of the highest bid and the conclusion of a contract for sale between the seller and the Buyer. Risk and Responsibility for the lot (including frames or glass where relevant) passes immediately to the Buyer.

### 5. After the Sale

#### a) Buyers Premium

In addition to the hammer price, the buyer agrees to pay to Mossgreen the buyers premium together with any applicable taxes in the place of sale. The buyer's premium is 22% of the hammer price plus GST. (Goods and Services Tax)

#### b) Payment and passing of title

Immediately after the sale, the buyer must provide Mossgreen with his or her name and permanent address and, if so requested, details of the bank from which payment will be made. The buyer must pay the full amount due (comprising the hammer price, buyers premium and any applicable taxes and GST) not later than 24 hours after the day of sale. This applies even if the buyer wishes to send the items interstate or overseas. The buyer will not acquire title for the lot until Mossgreen receives full payment in good cleared funds even in circumstances where we have released the lot to the buyer.

Payment can be made by direct transfer, cash or bank cheque payable to Mossgreen Auctions. See the included payment form.

Personal cheques will be accepted but goods may not be collected before there are good cleared funds in Mossgreen's account. This means that there will be charges for collection and storage from the auction premises, which will be due to the appointed removals company used by Mossgreen Auctions. This removals company will have the right to demand payment of these extra charges before releasing goods to you even though your account with Mossgreen will have been settled.

#### c) Collection of Purchases & Insurance

Mossgreen is entitled to retain items sold until all amounts due to us have been received in full in good cleared funds. Subject to this, the buyer shall collect purchased lots within 48 hours from the date of the sale unless otherwise agreed in writing between Mossgreen and the Buyer.

At the fall of the hammer, insurance is the responsibility of the purchaser.

#### d) Packing, Handling and shipping

Mossgreen will be able to suggest removals companies that the buyer can use but takes no responsibility whatsoever for the actions of any recommended third party. Neither Mossgreen nor its staff will pack and handle goods purchased at the auction and it is the responsibility of the buyer/s to organise this.

### e) Cultural heritage Export Licences

Unless otherwise agreed by us in writing, the fact that the buyer wishes to apply for an export licence does not affect his or her obligation to make full payment immediately, nor our right to charge interest or storage charges on late payment. It is the buyer's responsibility to check Australia's protection of Moveable Cultural Heritage Act 1986 before purchase. If the buyer requests Mossgreen to apply for an export licence then we shall be entitled to charge a fee for this service. We shall not be obliged to rescind a sale nor to refund any interest or other expenses incurred by the buyer where payment is made by the buyer in circumstances where an export licence is required.

### f) Remedies for non-payment

If the buyer fails to make full payment immediately, Mossgreen is entitled to exercise one or more of the following rights or remedies (in addition to asserting any other rights or remedies available to the law)

- i) to charge interest at such a rate as we shall reasonably decide
- ii) to hold the defaulting buyer liable for the total amount due and to commence legal proceedings for its recovery along with interest, legal fees and costs to the fullest extent permitted under applicable law
- iii) to cancel the sale
- iv) to resell the property publicly or privately on such terms as we see fit
- v) to pay the seller an amount up to the net proceeds payable in respect of the amount bid by the defaulting buyer
- vi) to set off against any amounts which Mossgreen may owe the buyer in any other transactions, the outstanding amount remaining unpaid by the buyer.
- vii) where several amounts are owed by the buyer to us, in respect of different transactions, to apply any amount paid to discharge any amount owed in respect of any particular transaction, whether or not the buyers so direct.
- viii) to reject at any future auction any bids made by or on behalf of the buyer or to obtain a deposit from the buyer prior to accepting any bids.
- ix) to exercise all the rights and remedies of a person holding security over any property in our possession owned by the buyer whether by way of pledge, security interest or in any other way, to the fullest extent permitted by the law of the place where such property is located. The buyer will be deemed to have been granted such security to us and we may retain such property as collateral security for such buyer's obligations to us.
- x) to take such other action as Mossgreen deem necessary or appropriate

If we do sell the property under paragraph (iv), then the defaulting buyer shall be liable for payment of any deficiency between the total amount originally due to us and the price obtained upon reselling as well as for all costs, expenses, damages, legal fees and commissions and premiums of whatever kinds associated with both sales or otherwise arising from the default.

If we pay any amount to the seller under paragraph (v) the buyer acknowledges that Mossgreen shall have all of the rights of the seller, however arising, to pursue the buyer for such amount.

### g) Failure to collect purchases

Where purchases are not collected within 48 hours from the sale date, whether or not payment has been made, we shall be permitted to remove the property to a third party warehouse at the buyer's expense, and only release the items after payment in full has been made of removal, storage handling, insurance and any other costs incurred, together with payment of all other amounts due to us.

## 6. Extent of Mossgreen Liability

Mossgreen agrees to refund the purchase price in the circumstances of the Limited Warranty set out in paragraph 7 below. Apart from that, neither the seller nor we, nor any of our employees or agents are responsible for the correctness of any statement of whatever kind concerning any lot, whether written or oral, nor for any other errors or omissions in description or for any faults or defects in any lots. Except as stated in paragraph 7 below, neither the seller ourselves, our officers, agents or employees give any representation warranty or guarantee or assume any liability of any kind in respect of any lot with regard to merchantability, fitness for a particular purpose, description, size, quality, condition, attribution, authenticity, rarity, importance, medium, provenance, exhibition history, literature or historical relevance. Except as required by local law any warranty of any kind is excluded by this paragraph.

## 7. Limited Warranty

Subject to the terms and conditions of this paragraph, the owner warrants for the period of thirty days from the date of the sale that any property described in this catalogue (as such description may be amended by any saleroom notice or announcement) which is stated without qualification to be the work of a named author or authorship is authentic and not a forgery. The term "Author" or "authorship" refers to the creator of the property or to the period, culture, source, or origin as the case may be, with which the creation of such property is identified in the catalogue.

This warranty does not apply to supplemental material, which appears below the first line description of each lot, and neither the owner nor Mossgreen auctions will be held responsible for any errors or omissions in such material. The terms used in the first line descriptions are further explained in Important Notices and Explanation of Cataloguing Practice. The warranty does not apply to any heading, which is stated to represent a qualified opinion. The warranty is subject to the following:

- i) it does not apply where a) the catalogue description or saleroom notice corresponded to the generally accepted opinion of scholars and experts at the date of the sale or fairly indicated that there was a conflict of opinions, or b) correct identification of a lot can be demonstrated only by means of a scientific process not generally accepted for use until after publication of the catalogue or a process which at the date of the publication of the catalogue was unreasonably expensive or impractical or likely to have caused damage to the property.
- ii) the benefits of the warranty are not assignable and shall apply only to the original buyer of the lot as shown on the invoice originally issued by Mossgreen when the lot was sold at Auction.
- iii) the Original Buyer must have remained the owner of the lot without disposing of any interest in it to any third party
- iv) The Buyer's sole and exclusive remedy against the seller in place of any other remedy which might be available, is the cancellation of the sale and the refund of the original purchase price paid for the lot less the buyers premium which is non refundable. Neither the seller nor Mossgreen will be liable for any special, incidental nor consequential damages including, without limitation, loss of profits not for interest.
- v) The buyer must give written notice of claim to us within thirty days of the date of the Auction. The seller shall have the right, to require the buyer to obtain two written opinions by recognised experts in the field, mutually acceptable to the Buyer and Mossgreen to decide whether or not to cancel the sale under warranty.
- vi) the Buyer must return the lot to seller in the same condition that it was purchased in.

## 8. Severability

If any part of these Conditions of Sale is found by any court to be invalid, illegal or unenforceable, that part shall be discounted and the rest of the conditions shall continue to be valid to the fullest extent permitted by law.

## 9. Copyright

The copyright of all images, illustrations and written material produced by Mossgreen relating to a lot including the contents of this catalogue, is and shall remain the property at all times of Mossgreen and shall not be used by the buyer, nor by anyone else without our prior written consent. Mossgreen and the seller make no representation or warranty that the buyer of a property will acquire any copyright or other reproduction rights in it.

## 10. Law and Jurisdiction

The rights and obligations of the parties with respect to these Conditions of Sale, the conduct of the auction and any of the foregoing shall be governed and interpreted by the laws of the jurisdiction in which the auction is held. By bidding at auction, whether present in person or by agent, by written bid, telephone bid or other means, the buyer shall be deemed to have submitted for the benefit of Mossgreen, to the exclusive jurisdiction of the courts of that country, state or province and (if applicable) of the federal courts sitting in such state.

## 11. Estimates

Mossgreen will provide oral estimates on all lots in this sale and buyers should check with the auctioneer as to a received estimate closer to the sale, which could vary according to buyer's interest.

## 12. Sale results

The auctioneer will provide auction results, which will be available one clear working day after the sale. Results will include buyer's premium. These results will be posted at [www.mossgreen.com.au/currentauction](http://www.mossgreen.com.au/currentauction)

## 13. Goods and Service Tax

Under Australian legislation Mossgreen Auctions will collect on behalf of the government Australian tax office (ATO) a Goods and Service tax of 10% on all applicable transactions where the seller's property is owned by an entity registered for GST. Auctions will be held under a GST exclusive basis. GST will be charged on the buyer's premium in all cases. In cases where the seller is selling property that is owned by an entity registered for GST then Mossgreen will charge GST on the hammer price in addition.

This is denoted by a dagger symbol † placed next to the estimate.

Overseas buyers and buyers non resident in Australian will not be charged GST under the following terms:

1. The non-resident is not in Australia when the auction occurs
2. The non-resident buyer must not use an agent or representative in Australia
3. The purchaser must sign a declaration of non-resident status.

Please note GST on the buyers premium is non refundable as this tax is deemed to be on services provided within Australia

GST for overseas purchases will be waived when the goods are exported only by Mossgreen's recommended freight company if exported within 60 days of the earlier of the issue of an invoice or receipt of any consideration from the vendor which ever is the earlier. The invoice supplied by Mossgreen for purchases will be regarded as a Tax invoice for GST purposes.

## 14. Resale Royalty Scheme

Under the legal obligations of the Resale Royalty Scheme for Visual Artists Act 2009, sellers must provide the following information to comply with the act:

- was the artwork acquired after 8 June 2010?
- is the sale/reserve price (including GST) \$1,000 or more?
- is the artist from Australia or a country listed in the Regulations to the Act?
- is the artist alive, or deceased less than 70 years?

The seller:

- i) acknowledges that he or she understands his or her legal obligations under the Resale Royalty for Visual Artists Act 2009 (the Act);
- ii) undertakes to comply with all requirements of the Act, including by providing its agent, the company, with accurate information sufficient for compliance with sections 28 and 29 of the Act;
- iii) undertakes to indemnify the company for any loss incurred by the company as a result of the vendor's failure to comply with any of the vendor's legal obligations under the Act; and
- iv) acknowledges that if he or she fails to comply with any of his or her legal obligations under the Act, the company may provide the vendor's name and contact details to Copyright Agency Limited (CAL).